

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-249-E - ORDER NO. 2001-1095
DECEMBER 5, 2001

IN RE: Gary Weaver,)	ORDER DISMISSING
Complainant,)	COMPLAINT WITH
)	PREJUDICE
-vs.-)	
)	
Carolina Power & Light Company,)	
)	
Respondent.)	

I. INTRODUCTION AND SUMMARY OF TESTIMONY

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Complaint of Gary Weaver against Carolina Power & Light Company (CP&L or the Company). Weaver's Complaint alleged, among other things, improper billing practices and procedures, including improperly billed amounts by the Company. CP&L denied the allegations of the Complaint. For the reasons stated below, we dismiss the Complaint on its merits, with prejudice.

A hearing was held on the matter on November 27, 2001 at 2:30 PM in the offices of the Commission. The Honorable William Saunders, Chairman, presided. Gary Weaver represented himself pro se. CP&L was represented by Len S. Anthony, Esquire. The Company presented the testimony of Gregory A. Cagle. The Commission Staff was represented by F. David Butler, General Counsel. The Staff presented the testimony of April Sharpe.

Weaver testified in support of his complaint. Weaver alleged that CP&L had violated its own conditions for conduct of the Equal Payment Plan (EPP) with respect to Weaver's account, in arbitrarily increasing his EPP amount without notice. Weaver also stated that CP&L has consistently charged late charges incorrectly and cumulatively. In addition, Weaver alleged that the Company disconnected his service in violation of Commission regulations, for example, without prior notice. Weaver also states that CP&L harassed him. With regards to billing, Weaver stated a belief that CP&L has been inconsistent, incorrect, arbitrary and confusing, and that CP&L disregarded payment arrangements made. Weaver requested sanctions and damages against CP&L, a refund order, and other relief. (We would note parenthetically that we are without authority to award sanctions and damages in this case, nor are we able to rule on Weaver's request that we declare CP&L to have engaged in unfair trade practices.) Weaver testified that CP&L at times apparently held his checks for payment up or otherwise mishandled them. Parties and Commissioners attempted to propound questions to Weaver with regard to his ability to pay his bill. Inquiries into his finances were rebuffed with comments like "That's none of your business." Weaver would only state that \$280 per month plus or minus could be paid on the electric bill.

Gregory Cagle, Project Analyst-Regulatory Affairs for Progress Energy Services, testified for CP&L. Cagle stated that Mr. Weaver and his wife own a three-story house and approximately 200 acres of farmland near the community of Little Rock, South Carolina, which is outside of Dillon, and have lived there since 1994. (Weaver disputes ownership, stating that the house and farmland are owned by a trust.) Cagle stated that

there are several other metered buildings on the property, including a guest cottage. Cagle opined that, as residential customers go, Mr. Weaver and his wife are relatively large users of electricity. The main house has a 400-amp service entrance, compared to the 200-amp service entrance installed on the vast majority of residences. Cagle further states that electrical consumption in the main house over the last five years has averaged about 2250 kilowatt-hours per month, and their overall bills have averaged about \$280 a month. The monthly CP&L bill for the main house presently includes a basic facilities charge, energy charges for metered service, \$67.86 per month for six 9500 lumen sodium-vapor area lights, \$57.99 per month for payment on CP&L loans for heat pumps and energy efficiency upgrades installed in early 1999, and a monthly lease payment of \$9.49 for CP&L-owned surge suppression equipment and associated state and local sales taxes. Cagle notes that because the account is in arrears, the monthly bills typically include a 1% late payment charge on one or more of the above-listed items. All but the lease payment of \$9.49 for the surge suppression equipment and taxes are charges approved by this Commission and reflected in CP&L's filed tariffs.

According to Cagle, the records of CP&L reflect that Weaver consistently makes partial payments, intentionally withholding payment for specific line items that he disputes. He often pays his monthly bill using multiple checks earmarked for specific components of the bill. Sometimes he pays using a mixture of present-dated and post-dated checks with handwritten processing instructions that require special handling by CP&L. The result, according to Cagle, is an extremely convoluted accounting record, and an unusually labor-intensive account to administer.

At the time of the hearing, Weaver's account balance was \$4,625.89. Cagle noted that much of the debt was accumulated during a nearly four-year period (March 1997 to December 2000) when Weaver's account was on CP&L's Equal Payment Plan. The EPP is a tool designed to help customers budget for electric bills by establishing a twelve-month "levelized" monthly payment based on historical data. The problem was that throughout the 46 months that Weaver was on the EPP, his monthly EPP amount was set, at Weaver and/or his wife's insistence and against CP&L's recommendations-at a level substantially below the amount of his actual monthly usage. The result, according to Cagle, was that regardless of whether he paid his bills on time and in full, his EPP deficit balance grew with each passing month. CP&L records show that at the end of his first year on EPP, Weaver's deficit account balance was approximately \$1500. By the time he was removed from EPP in December 2000, his deficit balance had grown to more than \$3,000. In the eleven months since his removal from EPP, Cagle states that Weaver's debt has grown to more than \$4,000, mainly because of Weaver's partial payments on his monthly bills, and his refusal to make payment arrangements for (or even acknowledge the existence of) his debt.

Cagle states that Weaver paid his EPP bills on time and in the proper amount only when his account was on bank draft. Out of twenty-three months when Weaver was not on bank draft, CP&L records show that Weaver was late a total of eighteen times, and paid the full amount of the EPP bill only five times. Weaver's monthly arrearage built up to the point that his EPP payment required in December 2000 was \$2,012.56. When Weaver defaulted on this payment, CP&L removed him from the plan. Cagle further

notes that even when Weaver paid the required EPP amount on time, his debt was continuing to accumulate because his monthly EPP was always too low to cover his average monthly consumption, let alone reduce his debt.

Cagle noted that the Company attempted several times to increase the amount of the EPP, however, each notice drew a round of phone calls from the Weavers, who would call until they were successful in having a Company representative set an EPP figure that they considered appropriate. Invariably, though, this amount was insufficient to lower the amount of debt. Cagle notes that the Company attempted to remedy the situation, but the Weavers have fought each attempt with either pleas for sympathy and lenience on the grounds of ill health and limited/fixed income, or with indignant, threatening letters to the Commission accusing CP&L of negligence and/or incompetence.

In response to Weaver's allegations of CP&L consistently charging late charges incorrectly and cumulatively, Cagle states that CP&L has billed late payment charges in strict accordance with the filed tariff and the referenced Commission rule, and in a fashion consistent with all other customers. Cagle states that Weaver's allegations regarding the charging of late payment charges are at best vague and unsubstantiated.

With regard to the subject of electric service disconnection, Cagle discusses Weaver's allegations that the Company violated several rules regarding prior notice to the customer. Cagle notes that the Company followed all of the appropriate rules, and did not violate any of them.

In summary, Cagle states that since January 1997, CP&L has accurately billed the Complainant for both Commission-regulated services and unregulated services. Further,

Cagle has not discovered any billing adjustments that should be made to Weaver's residential account. Lastly, Cagle asserts that all of Weaver's bills since January 1999 have been prepared in accordance with CP&L's standard billing practices, procedures, and programs which are used to bill all of CP&L's customers.

The Commission Staff presented the testimony of April Sharpe, Manager of the Commission's Consumer Services Department. Mrs. Sharpe presented the findings of the Department's Complaint investigation.

Mrs. Sharpe noted that Weaver filed a letter of complaint against the Company on December 27, 2000. In his complaint, he claimed that the Company threatened termination of service after a payment agreement was made by telephone on December 8, 2000 with a Company customer service representative. According to the Company, Mrs. Weaver called and talked with a customer service representative, but there was no payment agreement made. Mrs. Sharpe pointed to the Company's record of customer contact history, which indicated that Mrs. Weaver advised that she could pay \$412.28 of the charges billed. Payments totaling \$434.17 posted to the Weaver account on December 13, 2000, leaving a balance of \$3,016.57. On December 15, 2000, the Company sent a discontinuation notice for payment of the past due amount of \$918.02 to avoid disconnection.

Mrs. Sharpe went on to summarize Weaver's payment history while on the EPP. Mrs. Sharpe noted that her review of Company records revealed that Mr. Weaver did not pay the amounts as billed by past due dates for August, September, October, November, and December of the year 2000.

Mrs. Sharpe stated a belief that the Company should have removed Weaver from the EPP as soon as he failed to comply with the payment requirements of the agreement, and it should have not agreed to adjust the EPP to lower payments which resulted in an increasing balance. The Company records showed that Mr. Weaver had a history of late payments which resulted in late payment charges as authorized by Commission Regulation 103-339(3). Further, Ms. Sharpe stated that Weaver has not met his obligation to pay the Company for the electric services he received as prescribed by Commission Regulation 103-341(2).

Mrs. Sharpe also expressed the opinion after her investigation that CP&L complied with the following Commission regulations: 103-340(5) to provide payment by the Equal Payment Plan; 103-352(A) and (B) to send the customer 10 and 2 day written notices of service disconnection for non-payment; and 103-352(C) to offer the customer a deferred payment plan for payment arrangements for an outstanding account balance.

Mrs. Sharpe concluded that the Company has attempted reasonable efforts for collection of the outstanding account balance, and the customer has not met his obligation to pay the Company for the electric services he received. As of October 31, 2001, Weaver's account balance was \$4,362.81.

We would note that there was also discussion in the testimony of the various witnesses about difficulties with Weaver's outside lighting. However, we believe that these issues have been resolved with our separate ruling granting in part Weaver's partial motion for summary judgment. See Order No. 2001-1090.

Also, it should be stated that counsel for CP&L moved for a directed verdict and for dismissal at the end of Weaver's case. He also renewed his motion for a directed verdict at the end of all of the evidence.

II. DISCUSSION

First of all, we would state that our view of the matter after hearing all of the evidence in this case is that Weaver's testimony lacks credibility when compared with the testimony of the Company and the Commission Staff. Clearly, Weaver's ability to pay his bill was relevant in this case, considering the large amount of arrearage accumulated by him. His refusal to answer relevant questions related to this subject contribute to our belief that Weaver simply failed to prove his case. Further, after hearing all of the testimony, we simply do not believe that CP&L violated any Commission regulations in its handling of this case, although we do believe that the better practice would have been to have either removed Weaver from the EPP as suggested by Mrs. Sharpe, or, in the alternative, to have set the EPP at a level where no further arrearage accumulated. However, it appears to us that CP&L acted pursuant to humanitarian instincts in both keeping him on the EPP and not increasing the amount of the monthly payment under the plan. We therefore understand the Company's actions in this case with regard to the EPP Plan, and we do not believe that the Company violated any regulations in this regard.

The Findings of Fact and Conclusions of Law below will lay out our reasoning in this case, however, we would point out that our ultimate dismissal of this case is based on Weaver's failure to prove his case before us, rather than through a ruling on CP&L's Motions for Directed Verdict and Motion to Dismiss. We believe that Motions for

Directed Verdict under Rule 50, SCRCF are only appropriate in jury trials. Therefore, both Motions for Directed Verdict are denied. Further, CP&L's Motion to Dismiss at the end of Weaver's case is denied. During the course of his testimony, CP&L alleges that Weaver failed to demonstrate an inability to pay his electric bill. CP&L made its Motion to Dismiss on this basis. This Motion is denied, because, as is seen from the totality of the testimony, the issues in this case are broader than the question of ability to pay.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Complainant, Gary Weaver, is a retail residential electric customer of Carolina Power & Light.

2. Weaver is a relatively large residential user of electricity, with a five year electrical consumption in the main house of about 2250 kilowatt-hours per month.

3. Weaver's complaint entailed references to CP&L's alleged violations of procedures and Commission regulations in the area of the Equal Payment Plan, late charges, disconnection, and billing. Weaver also claims harassment by CP&L.

4. At the time of the hearing, Weaver's CP&L account balance was \$4,625.89.

5. When CP&L attempted to "true-up" the amount of the EPP, Weaver and/or his wife prevailed on CP&L's humanitarian instincts to keep the payment at a level where arrearages continued to accumulate.

6. Weaver consistently makes partial payments.

7. Weaver was late in his payments to CP&L a total of eighteen times out of twenty-three payments.

8. The disconnection of Weaver's service was done with the proper notices.

9. Since January 1997, CP&L has accurately billed the Complainant for both Commission-regulated services and unregulated services. Since January 1999, Weaver's bills have been prepared in accordance with CP&L's standard billing practices, procedures, and programs which are used to bill all of CP&L's customers.

10. Weaver has failed to prove his case, and his testimony lacks credibility. When asked about his ability to pay his electric bills, Weaver consistently refused to answer inquiries from both the parties and the Commissioners themselves. Weaver's ability to pay was relevant in the Commission's determination of this case.

11. CP&L properly followed Commission Regulation 103-339(3).

12. Weaver has not met his obligation to pay the Company for the electric services he received as prescribed by Commission Regulation 103-341(2).

13. CP&L complied with Regulation 103-340(5) on the Equal Payment Plan. Proper notice was given Weaver when true-ups were attempted.

14. CP&L complied with Regulation 103-352(A) and (B) to send the customer 10 and 2 day written notices of service disconnection for non-payment of his electric bill.

15. CP&L complied with Regulation 103-352(C) when it offered Weaver a deferred payment plan for payment arrangements for an outstanding account balance.

16. CP&L did not "harass" Weaver.

17. CP&L's Motions for Directed Verdict are denied, since such Motions under Rule 50, SCRCR are reserved for jury trials.

18. CP&L's Motion to Dismiss is denied, since it was based only on Weaver failing to show a lack of ability to pay. As shown above, there were multiple issues in this case.

19. Weaver's complaint is without merit and must be dismissed with prejudice. Weaver failed to demonstrate an inability to pay the amount due for residential electric service consumed by him as billed by CP&L. Additionally, Weaver was evasive and non-responsive to questions regarding his ability to pay his electric bill. Further, Weaver failed to demonstrate any error in CP&L's billing practices and procedures, and failed to demonstrate that the balance stated on his bill was incorrect. Weaver also failed to demonstrate harassment by CP&L, and failed to demonstrate that all proper notices were not given to him prior to attempted true-ups on the EPP, and prior to disconnection.

20. Weaver's complaint is hereby dismissed, with prejudice.

21. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)